

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO. 8:07CR392</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>TENTATIVE FINDINGS</b>
	)	
<b>LUIS MARQUEZ-RUBIO,</b>	)	
	)	
<b>Defendant.</b>	)	

The Court has received the Presentence Investigation Report ("PSR"). The government adopted the PSR. (Filing No. 73.) See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The plea agreement includes an agreement that the Defendant should receive a 2-level reduction under U.S.S.G. § 3B1.2 for a minor role in the offense. (Filing No. 60, ¶ 8(b).) However, this role reduction is not reflected in the PSR, yet the PSR states that the plea agreement does not depreciate the seriousness of the offense. (PSR, ¶ 73.) Neither party objects to the PSR. However, the Court will discuss the matter at sentencing. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld in its entirety.

**IT IS ORDERED:**

1. The Court's tentative findings are that the plea agreement, including the role reduction in ¶ 8(b), should be upheld;
2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;

3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 8<sup>th</sup> day of September, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge